THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No.22851 of 2005

28 -12-2006

Between:-

Kesana Kotaiah

Petitioner

And

The Government of Andhra Pradesh, Department of Revenue (Endowments-IV), rep., by its Principal Secretary, Secretariat, Hyderabad and others.

Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 22851of 2005

ORAL ORDER:

An ex-Trustee of Sri Brahmarambha Chennamalleswara Swamy Temple, Esukapalli village, Repalle Mandal, Guntur district (for short 'the Temple') assails the order of the first respondent in G.O.Ms.No. 64 Revenue (Endowments-IV) Department dated 10-01-2005 (for short G.O. 64') whereby in purported exercise of power under Section 80(1) (c) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act No. 30 of 1987) (for short 'the Act'), permission is accorded to the second respondent to register two plots (belonging to the fourth respondent-Temple) in favour of the legal heirs of original encroachers at the prevailing market rate in terms of earlier orders issued in G.O.Ms.Nos. 1016 and 508 of Revenue (E.IV) Department dated 10-12-1996 and 26-06-1999 respectively, by collecting the balance amount with 12% interest. By this order, the second respondent is also directed to regularize the land encroached by the respondent Nos. 5 and 6 herein by collecting the prevailing market value with 12% interest including legal expenses incurred by the Temple in connection with O.A.Nos. 56 and 51 of 2001.

Though writ petitioner has challenged the orders of the Government in G.O.Ms.No. 1016 and 508 dated 10-12-1996 and 26-06-1999 as well, at the hearing of the writ petition, learned counsel

for the petitioner at the oral hearing has confined the challenge to the orders in G.O.No. 64 and has relinquished the challenge in respect of the other two Government orders. The validity of G.O. 64 alone is thus considered for adjudication in this writ petition.

The learned counsel for the petitioner contends that the several orders of the State Government purporting to exercise power under Section 80 of the Act is a colorable, irrelevant and subversive exercise of power, in abdication of statutory responsibility and in transgression of the legislative mandate under the provisions of the Act.

The first respondent has filed a counter affidavit dated 02-12-2006 which sets out a comprehensive narrative of relevant facts. The facts, to the extent relevant and material for the purpose of this writ petition, as gathered from the first respondent's counter are set out in brief as under:

(i) The fourth respondent-Temple has Ac.05-19 cents in survey Nos. 58/1 and 58/2 at Isukapalli village, Repalle Mandal, Guntur district. An extent of Ac.04-22 cents was occupied by seventy nine (79) persons in 1956 unauthorisedly. These encroachers constructed huts and buildings in the area and are living with their families without paying any amount to the Temple.

(ii) Initially, the non-hereditary trustees tried to evict these encroachers by filing applications under the Act. After orders of eviction were passed, some of the occupiers including one B. Ramalingaiah represented to the State Government. On 04-09-1991, the State Government rejected the representation. B. Ramalingaiah then filed a review petition for re-consideration of the order dated 04-09-1991. The State Government having heard B. Ramalingaiah as well as the representative of the Chairman of the Trust Board of the temple, decided that approximately Ac.01-00 of land adjacent to the road must be sold in public auction and the remaining land sold to the encroachers giving preference to the original encroachers, who were evicted through court orders, at a concessional rates and for extents of not more than

Ac.0-03 cents per family.

(iii) The State Government issued a memo dated 06-05-1982 calling upon the second respondent to suggest the concessional rate at which land could be sold to the encroachers and to propose the names of the encroachers to whom the lands are to be sold. Apparently, by the memo dated 06-05-1982, the State was dictating to the Commissioner of Endowments to alienate endowment lands at concessional rates to the encroachers.

(iv) Pursuant to the Government Memo dated 06-05-1982 and (apparently) after an acquiescing endorsement by the Commissioner of Endowments to the irrational proposal of the State, an extent of Ac.01-00 encroachment was removed and public auction was conducted on
07-07-1982. Rs.3,50,000-00 was the price obtained. The sale was confirmed and registered. The Trust Board then passed a resolution on 15-05-1985 to sell land at Rs.3,500-00 per 'cent'. Encroachers, however were not willing to pay Rs.3,500-00 on account of claimed penury. Thereafter negotiations were conducted for re-computing the rate. These negotiations continued till 1985 and the encroachers continued on the lands in question and the Temple derived nothing except a hyperactive state of negotiations with encroachers with the active participation of the Commissioner, Endowments.

(v) The Deputy Commissioner, Endowments, Guntur visited Repalle on 05-11-1995 and 10-12-1995, called the representatives of the political parties, encroachers and the Executive Officer of the Temple and discussed the matter. Representatives of political parties passed a resolution on 10-12-1995 that encroachers should pay Rs.4,500-00 per 'cent' to settle the issue 'amicably in the best interest of the temple' taking into consideration that Rs. 3,50,000-00 was secured at the public auction held in 1982. According to the first respondent, the value of Rs.4,50,000-00 per acre in 1995 was beneficial (to whom?), as there was no income from the lands since 1956. {In all this exuberance, neither the State nor the

Commissioner, Endowments asked a single relevant question as to what deficiency handicapped or impediment the State and Commissioner, Endowments suffered from that disability the sovereign might of State Government and the statutory might of the Endowments Department to evict the encroachers notwithstanding the stringent and summary provisions of Sections 83 to 86 of the Act which set out a special *non obstente* procedure for dealing with encroachments and ensuring their eviction from endowment lands.}

(vi) After the all party resolution, it would appear that the Deputy Commissioner of Endowments requested the Commissioner of Endowments to address the Government to sell the land to the encroachers by private negotiations under Section 80(1) of the Act (otherwise than by public auction) (paragraph No.7 of the first respondent's counter). On the basis of this astute recommendation of the Deputy Commissioner of Endowments, the Commissioner of Endowments in his letter dated 13-03-1996 requested the State to issue orders for sale of land in an extent of Ac.04.22 cents to the seventy nine (79) encroachers by private negotiations at Rs.4,500-00 per 'cent'. (paragraph No.8 of the counter affidavit of the first respondent). In paragraph No.9 of the counter affidavit, the first respondent states that *"after careful consideration of the matter taking into consideration that the encroachers would be put to an end and in the interest of the institution, Government in exercise of the powers conferred by the first proviso to clause (c) of sub-section (1) of Section 80 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act 30/87,) issued orders in G.O.Ms.No. 1016, Revenue (Endts.IV) Department dated 10-12-1996 duly according permission to the Commissioner of Endowments Department, Hyderabad, for sale of the land Ac.4.22 Cts., in D.No. 58/1 & 58/2 belonging to Sri Bramaramba Chenna Malleswara Swamy Temple, Isukapally village, Repalle Mandal, Guntur district in favour of 79 encroachers by private negotiations at the rate of Rs.4,500-00 per cent" subject to the conditions.*

(vii) In G.O.Ms.No. 1016, a ceiling of the extent of land for regularization was incorporated viz., not more than Ac.0-03 cents of site each and certain other conditionalities. Apparently, the careful consideration of the matter by the State led to an administrative conclusion that yielding to the encroachers was the only option available to the State and there was available no statutory or executive power to safeguard encroachments of endowment properties. Such are the meandering and idiosyncratic ways of the State and such is the commitment and fidelity of the executive to the legislative mandate.

(viii) Pursuant to the policy decision to liquidate endowment properties of the fourth respondent-Temple, taken in G.O.Ms.No. 1016, the Commissioner of Endowments performed the ritual of a notification calling for objections and suggestions. It is not clear from the counter whether land was sold to all or some of the encroachers and whether the land was registered in favour of said encroachers and in what extent and in respect of how many encroachers.

(ix) However it would appear that Syed Sattar son of Ibraheem, Smt. Y. Nagamalleswari wife of Y.E. Vara Prasad and Shaik Habib had not paid the amount as stipulated in G.O.Ms.No. 1016. Therefore, forty five (45) years after the encroachment, in 2001 the Executive Officer of the Temple sought eviction of the encroachers and filed appropriate applications before the Deputy Commissioner of Endowments under Section 83 of the Act. The Deputy Commissioner passed orders of eviction in O.A.Nos. 56 and 57 of 2001 on 20-04-2002 directing eviction of Syed Sattar, Smt. Y. Nagamalleswari and Shaik Habib (paragraph No.11 of the counter affidavit of the first respondent).

(x) The Assistant Commissioner of Endowments also appears to have reported to the State Government that he had executed the orders under Section 84 of the Act in respect of the occupation of Smt. Y. Nagamalleswari, Syed Sattar and Shaik Habib on 01-09-2006 and 29-09-2006 respectively. The first respondent states that the orders of eviction dated 20-04-2002 were executed in September, 2006 on account of “administrative reasons”.

Whether such reasons were germane or on account of negligence of the first respondent, the counter does not clarify.

(xi) The first respondent counter also admits that the litigative campaigns by other encroaches or their successors in interest such as Vuyyur Mahalakshmi and Kesana Parvathamma, yielded no benefit to these encroachers.

(xii) Thereafter the second respondent by his letter dated 23-09-2004 requested the first respondent to accord permission to register two plots in favour of the legal heirs of original encroachers after collecting the balance amount, with 12% interest. The second respondent is stated to have made these recommendations in respect of the encroachers against whom the eviction orders were passed viz., Syed Sattar, Smt. Y. Naga Malleswari who had not paid any amount whatsoever.

Why the Commissioner of Endowments, an authority, obligated to execute the provisions of the Act relentlessly and with the singular legitimate agenda viz., safeguarding the interests of the endowment institution, was solicitous to encroachers and why such abdication of statutory responsibility by the Commissioner of Endowments did not elicit the disapproval and rejection of such irrational proposals by the State Secretariat, is not apparent. Apparently, the State and the Commissioner of Endowments are more concerned for the encroachers of endowment properties than mindful of their statutory obligations.

(xiii) An eager State took up the Commissioner's recommendations (dated 23-09-2004) eagerly and issued the impugned G.O.64, permitting the second respondent to register two plots in favour of two original encroachers, collecting the "prevailing market rate", under Section 80 of the Act in furtherance of the earlier acts of benevolence in G.O.Ms.Nos. 1016 and 508 (liquidating endowment property to benefit encroachers).

(xiv) In paragraph 18 of the counter affidavit, the first respondent asserts that under the provisions of the Act,

> the Government is competent to grant permission to sell immoveable properties of the endowments otherwise than public auction, in the interest of institution or endowment and for reasons to be recorded therefore in writing. A mere recantation of the statutory language does not legitimize the non-conformity of the executive action with the enactment.

Neither in G.O.Ms.No. 1016 or G.O.Ms.No. 508 nor even in G.O.64 is a single reason vouchsafed as to how the alienation is in the interest of institution. Overbroad, vague and rhetorical assertions are made in the counter affidavit stating that efforts made to evict the encroachers did not fructify. What efforts were made, what were the handicaps faced by the State; was it administrative inadequacy, manpower insufficiency; non-existent commitment or inadequate empowerment of the sovereign State to move against the encroachers or whether the encroachers had overpowered the State apparatus, is not clear. Mere irrelevant, unsubstantiated averments and assertions that encroachers could not be removed, compels an inference of gross and persistent abdication of statutory responsibility by the endowment officials. The assertions in the counter do not justify an inference that for fifty (50) years (since 1956), the State was powerless to evict seventy nine (79) encroachers squatting over Ac.04-22 cents of the fourth respondent-temple lands.

The counter of the first respondent, in the considered view of this court, is misleading and does not come out with full facts, relevant to the consideration of the case. It is not clear what impediments existed to the employment of full sovereign powers of the State legislative fortified by Sections 83 to 86 of the Act. It is also not clear what compulsions prevented the State from exercising the conferred statutory power. These compulsions and handicaps are safely ensconced in the breast

of the first respondent. The first respondent has not choses to share the deficiencies in the State's power, with this court.

The counter affidavit of the first respondent concludes with an assertion that the impugned G.O. 64 was issued in the interests of equity and equality. What the first respondent appears to suggest is that since the fourth respondent-temple lands were sold to serve the interests of some encroachers, principles of equity require that remnant land should also be sold to the other encroachers, who did not even chose to avail the extraordinary benefits conferred in G.O.Ms.No. 1016.

On 21-12-2006 this Court directed the learned Government Pleader to produce the note file leading to the issuance of G.O.Ms.No.1016, 508 and 64 dated.10-12-1996, 26-06-1999 and 01-01-2005 respectively, for the perusal of this Court. This Court has carefully perused the 16 pages of the note-file. From the perusal of the note file it appears that from the level of the Deputy Commissioner of Endowments right up to the level of the Secretary to the Government there is no evidence of any sensivity or concern for the text and purposes of the provisions of the Act.

The learned Government Pleader for Endowments and the learned Special Government Pleader appearing for the learned Advocate-General submit that the foundation and jurisdiction of the State underlying G.O.Ms.Nos.1016,508 and 64 are the provisions of Sec.80 of the Act. Sec.80(a) of the Act enjoins that a gift, share exchange or mortgage of any immovable property belonging to or given or endowed for the purpose of any charitable or religious institution or endowment shall be invalid unless such transaction not being a gift is effected with the prior sanction of the Commissioner. Even the Commissioner in the exercise of discretion under Sec.81 is required to accord sanction only where the sale exchange or mortgage

is (i) prudent, necessary or beneficial to the institution or endowment; (ii) is in respect of immovable property which is uneconomical for the institution or endowment to own and maintain and; (iii) the consideration is adequate and proper [Sec.80(b)]. Sec.80(c) of the Act enjoins that every sale of any such immovable property sanctioned by the Commissioner under Clause (b) shall be affected by tender-cum-public auction subject to confirmation by the Commissioner within a period prescribed.

The proviso to Sec.80(c) which is the mainstay of the defence on behalf of the official respondents, enables the Government to permit sale of immovable property otherwise than by public auction but only if it is in the interest of the institution or endowment and for reasons to be recorded therefor in writing (that the sale otherwise than by public auction is appropriate).

None of the orders of the Government (in G.O.Ms.No.1016, 508 or 64) record the satisfaction of the State that the alienation in favour of the encroachers was a prudent necessary or beneficial course of action for the institution or that it is in the interest of the institution that the sale should be otherwise than by public auction. In the context of the provision of Section 80 of the Act which consecrates a conditional power to the Government, the executive agencies of the State whether they be at the Secretariat level or in the Commissionerate of Endowments do not exercise an uncanalised or uncharted jurisdiction and power. The power is a conditioned power and is conferred to be employed strictly in the interest of the Hindu religious institution or endowment. The Commissioner of Endowments and the Government as well, before exercising power under the provisions of the Act would do well to at least read the provisions so as to understand the purposes for which power is conferred. Had adequate care been bestowed, it would have been apparent, even on a casual reading of

the provisions of Sec.80, that Government may exercise power under the proviso to Sec.80(c) only if the exercise is in the interest of the institution or endowment. The satisfaction (as to the existence of the interest of the institution) will have to be recorded by giving reasons.

No reasons whatsoever are recorded in G.O.Ms.No.1016, 808 or 64. The inference is perhaps compelling that none of the authors of the orders passed had even cared to read the provisions of Sec.80.

The Commissioner while granting sanction under Sec.80 (b) for gift, sale, and exchange or otherwise of immovable propriety of Endowment is also required to ensure that the consideration for such gift, sale or exchange is adequate and proper.

It is submitted by the learned Special Government Pleader that the order of the 1st respondent in G.O.Ms.No.1016 was issued on the basis of the proposals from the 2nd respondent dated.13-03-1996. As is apparent from the letter of the 2nd respondent dated.13-03-1996 which is admitted to be foundation for the Government order in G.O.Ms.No.1016, it would appear that one B.Ramalingiah petitioned the Honourable Minister for Endowments. That petition was forwarded to the 2nd respondent and the 2nd respondent was directed to discuss the matter. The 2nd respondent apparently discussed the matter with the Honourable Minister for Endowments and then set in motion a series of orchestrated administrative measures to generate a recommendation. He called for a report from the Assistant Commissioner and Deputy Commissioner of Endowments, Guntur. These officials submitted a report. The Deputy Commissioner, Guntur reported that the Devastanam owns an extent of Ac.4.22 cents of land, which was occupied by about 79 villagers since 1956 unauthorizedly and the encroachers had raised constructions and were not paying anything to the temple. The 2nd respondent's letter also states that

non-hereditary trustees tried to evict the encroachers by initiating proceedings under the Act and Ramalingiah was evicted. After their eviction the encroachers represented to the Honourable Minister for Endowments. The Honourable Minister for Endowments called for comments from the Commissioner. The 2nd respondent instead of assiduously protecting the interest of Endowments, according to his statutory obligations under the Act appears to have orchestrated reports and proposals to justify issuance of G.O.Ms.No.1016. Neither the 1st respondent nor the 2nd respondent during the entire extraneous exercise of power appear to have bothered to look up the provisions of the Sec.80 of the Act. Had they done so, they would have found no authority to liquidate the assets of the Devasthanam. Such are the inscrutable foundations of executive conduct by which the clear purposes of the Act are subverted in the hallways of the Secretariat; by executive insensitivity and absence of fidelity to the legislative purposes and lack of concern for the rigor of the provisions of the Act.

As earlier stated, G.O.Ms.No.1016 restricted the executive munificience to encroachers, to an extent of Ac.0.03 cents each. By G.O.Ms.No.508, the extent restriction was eschewed and Commissioner of Endowments was permitted to sell the sites under the physical occupation of each of the encroachers, 73 in number, without restricting the extent to Ac.0.03 cents. Why the ceiling was removed, there is no discussion in the note file! Encroachers appear to have an overpowering influence on the executive.

In the impugned G.O.Ms.No.64, dated.10-01-2005 the 1st respondent decided to continue the policy of disregarding endowment interests and overstepping the limits of the legislative mandate. Thus, even though the 5th and 6th respondents were evicted exercising power under Sec. 83 to 86 of the Act in O.A.No.56 and 51 of 2001 and even though the encroachers failed to avail the benefits under

G.O.Ms.No.1016, the 1st respondent was satisfied that the interests of the encroachers must prevail over the interests of the religious institution; and granted permission for sale of the encroached lands even in favour of the persons who were already evicted by process of law.

The petitioner, a former trustee of the 4th respondent-Devastanam, had filed writ petition.

In the considered view of this Court the order of the 1st respondent in G.O.Ms.No.64, Revenue Department dated.10-01-2005 is perverse and suffers from the vice of malice in law, total non-application of mind and subversion of the provisions of Sec.80 of the Act. This Court rejects the equivocal implication of the 1st respondent in the counter-affidavit that the respondent Nos.1 and 2 had to cave in to the encroachers since there was no alternative. As the Act provides speedy and summary procedures for eviction of encroachers there was no justifiable reason why the encroachers could not have been evicted for over 50 years. The counter-affidavit is designedly silent as to the steps taken for evicting the encroachers; why the steps if any taken were unproductive. It is therefore not possible to conclude that alienation of the land in favour of the encroachers was the only pragmatic alternative left to the State. The State does not assert that the encroachers overpowered the State or debilitated the vast powers available under Sec.80 to 86 of the Act. The inference is therefore compelling that the unlawful concern of the decision making authorities for the encroachers blinkered their discretion and disabled enforcement of the provisions of the Act. While exercising administrative powers in relation to administration of the material assets of religious institutions, the State should ever be conscious that it operated in a very delicate constitutional arena.

It may not under the garb of administrative oversight intervene to

promote or liquidate the material assets of religious denominations. It should with commitment and concern lend the vast expertise gained in the running the Government, to monitor and mentor the proper management of the assets of endowment institutions.

The provisions of the Act are carefully constructed to ensure that neither the Commissioner of Endowment nor the State Government have any uncharted discretion in dealing with endowment properties. The provisions of the Act, in particular the provisions of Sec.80 reinforce the legislative concern that while acting as a Government or as the Commissioner of Endowments, it is the interest of the institution and adequate return to the endowment institution on its capital which are the exclusive consideration.

If a particular officer of the State felt solicitous towards the encroachers he should have recused from performing functions under the Act and made over the function to an officer who had the necessary discipline, commitment and sensitivity to the provisions of the Act as would enable proper implementation of the legislative mandate. Alternatively if the Government felt sympathetic towards encroachers it could have rehabilitated the encroachers by relocating them in property belonging to the State or under its control. In any event, the State appears to have no power to liquidate endowment assets to accommodate same vague general policy. Such a course of conduct is inconsistent with the limited governmental power available under Sec.80 of the Act. It is this fundamental discipline that was eschewed in issuing G.O.Ms.No.64. G.O.Ms.No.64 must therefore perish and is accordingly quashed.

Since the 1st respondent has exercised his limited executive powers under Sec.80 of the Act, ignoring the limits, this Court considers it appropriate to allow the writ petition with costs of Rs.10,000/-(Rupees ten thousand only) payable by the 1st respondent,

of which Rs.5000/- shall be paid to the petitioner who has performed a public duty in pointing out the irrelevant and perverse conduct of the 1st respondent and challenged the same in the interest of the 4th respondent-Endowment, the balance Rs.5000/- shall be paid to the Secretary, Andhra Pradesh State Legal Service Authority, Hyderabad.

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GODA RAGHURAM,J

28th DECEMBER 2006
PVKS/*TSNR